

REQUEST FOR PROPOSALS

Falls Church City Public Schools, Falls Church, VIRGINIA



**Food Service Management Company (FSMC)
Request for Proposals (RFP) and Contract
RFP #2015160
July 1, 2015 to June 30, 2016**

Falls Church City Public Schools, VA, is accepting proposals for a FOOD OPERATIONS MANAGEMENT SERVICES CONTRACT. All proposals must be received in the Falls Church City Public Schools Purchasing Department before 1:00 p.m. (local prevailing time) on August 21st, 2015. The Falls Church City Public Schools Purchasing Department is located at 800 West Broad Street, Suite 203, Falls Church, VA 22046. All proposals submitted after that time will be returned to the sender. Proposals should be labeled: FOOD SERVICE MANAGEMENT RFP #2015160

A pre-proposal meeting shall be held in the Conference Room in the Falls Church City Public Schools Central Office Building, 800 West Broad Street, Suite 203, Falls Church, Virginia, on Friday, August 14th at 8:30 am. The complete details of the RFP and all updates will be posted on the Falls Church City procurement website www.fallschurchva.gov/bids. It is highly suggested to attend the pre-proposal meeting to have all questions answered in a timely manner.

The City of Falls Church Public Schools (“FCCPS”) is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability or that this document be made available in an alternate format, call 703 248-5600 (TTY 711).

The City of Falls Church Public Schools does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any Proposer or Proposer because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

In accordance with federal law and United States Department of Agriculture (USDA) policy, this institution prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and, where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual’s income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html , or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov .

Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

REQUEST FOR PROPOSALS

FALLS CHURCH CITY PUBLIC SCHOOLS, VIRGINIA

RFP #2015160

FOOD SERVICE MANAGEMENT

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I. **General Information**

A. **Intent**

This solicitation is for the purpose of entering into a contract with an independent, fully qualified Food Service Management Company (herein referred to as FSMC) acting as an agent for Falls Church City Public Schools (herein referred to as School Food Authority or SFA), for the preparation and delivery of pre-packaged, unitized breakfast and lunch meals for two school sites of the Falls Church City Public. THE FSMC will prepare wholesome, nutritious and appetizing meals to the satisfaction of the SFA, in compliance with all Federal regulations by the U.S. Department of Agriculture (USDA) for the National School Lunch (NSLP) and School Breakfast Programs (SBP) as set forth in 7 CFR 210, 7 CFR 220, 7 CFR, 245, 7 CFR 250, and any and all additions or amendments thereto. The successful offeror must have documented experience in Public School food service or school nutrition program management.

The contract will be between the FSMC and SFA.

B. **Procurement Method**

All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with Title 7 CFR § 3016. This is a fixed fee contract. The SFA and the FSMC agree that this contract is neither a “cost-plus-a-percentage-of-income” nor a “cost-plus-a-percentage-of-cost” contract as prohibited under 7 CFR 210.16(c) and 2 CFR 2210. The fees charged to the SFA by the FSMC shall include only the per-meal fee for each meal served. In order for the FSMC to be paid for á la carte food service activity the cash, sales shall be converted into an equitable number of reimbursable lunches in order to apply the fix fee per lunch meal. The conversion of the á la carte activity into an equitable number of lunches is termed the "per meal equivalency or meals equivalents". The formula established by the Virginia Department of Education for determining the meal equivalent shall be used for calculating the cost charge to the Board for all a la carte activity. This formula is described in paragraph P below.

C. **Pre-Proposal Meeting**

There will be a Non-Mandatory, Pre-Proposal meeting on Friday, August 14, 2015 at 8:30 a.m. local prevailing time, in the Conference Room of the Falls Church City Public Schools Central Office Building, 800 West Broad Street, Suite 203, Falls Church, VA 22046. The purpose of the meeting is to allow Proposers an opportunity to present questions and obtain clarification to any facet of the RFP. **Attendance is highly recommended.**

D. **Proposal Submission and Award**

1. Proposals are to be submitted to:

Falls Church City Public Schools Purchasing Department
Attention: Dr. Toni Jones
800 West Broad Street, Suite 203
Falls Church, VA 22046

Proposals must be received in the Falls Church City Public Schools Purchasing Office before 1:00 p.m. (local prevailing time) on August 21st, 2015. There will be no public opening of Proposals. Proposals will not be accepted after 1:00:00 p.m. on August 21st, 2015. Proposals are to be submitted in a sealed envelope marked Food Service Management RFP #2015160

2. The SFA will not conduct the procurement process in a manner that uses statutorily or administratively imposed in-state or local geographic preferences in accordance with Title 7 CFR § 3016.60(c).

3. SFAs are prohibited from entering into a contract with a FSMC that develops or drafts specifications, requirements, statements of work, requests for proposals, contract terms and conditions, or other documents for use in conducting procurement.
4. The SFA reserves the right to reject any or all bids/proposals, if deemed in the best interest of the SFA.
5. The SFA will award the contract to the qualified and responsible FSMC whose proposal is responsive to this solicitation. A responsible FSMC is one whose financial, technical and other resources indicate an ability to perform the services required by this solicitation.
6. FSMCs or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the FSMC's own risk and cannot secure relief on the plea of error. The SFA is not liable for any cost incurred by the offeror prior to the Virginia Department of Education's (VDOE) School Nutrition Program's (SNP) final approval of the contract and the signing of the contract by all parties. Paying the FSMC from School Nutrition Program funds is prohibited until the contract is signed by both parties.
7. If additional information is required, please e-mail Richard Kane at RKane@fccps.org. It is required that all questions be submitted via email. All questions must be submitted before 3:00 p.m. on August 18th, 2015.

a. Award Criteria

Cost and Performance Bond	20%
Service Capability	15%
Financial Conditions/Stability, Business Practices	10%
Accounting and Reporting Systems	5%
Personnel Management	10%
References	15%
Experience	15%
Promotion of the School Food Service Program	10%

Total Maximum : 100%

b. Proposal Protests

Any offeror may protest the award or decision to award a contract by submitting a protest in writing to the FCCPS Superintendent tjones@fccps.org no later than ten (10) calendar days after the Notice of Award or the Notice of Intent to Award, whichever occurs first. The Notice of Award will be posted on the Falls Church City Government website at www.fallschurchva.gov/bids. The written protest shall include the basis for the protest and the relief sought. The FCCPS Superintendent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken.

If prior to award, it is determined that the decision to award is arbitrary or capricious then the sole relief shall be a finding to that effect. The FCCPS Superintendent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made, but performance has not begun, the performance of the contract may be declared void by FCCPS. Where the award has been made and performance has begun, the FCCPS Superintendent may declare the contract void upon a finding that this action is in the

best interest of FCCPS. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this paragraph shall not be affected by the fact that a protest or appeal has been filed.

An award need not be delayed for the period allowed an Offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the offer would expire.

Please note that the Virginia Department of Education, Office of School Nutrition Program Office (VDOE, OSNP) must review and approve the contract with the selected vendor before the FCCPS is authorized to sign the contract.

c. Bonding Requirement

Proposal Guarantee: The FSMC shall submit with its proposal, a proposal guarantee for five percent (5%) of the total proposal price in the form of a firm commitment such as a bid bond, postal money order, certified check, cashiers check, or irrevocable letter of credit. Proposal guarantees other than bid bonds will be returned (a) to unsuccessful FSMCs as soon as practicable after the opening of bids; and (b) to the successful FSMC upon execution of such further contractual documents (i.e., insurance coverage) and bonds as required by the proposal.

Note that any vendor that fails to submit a bid/proposal bond of 5% (as stated in the paragraph above) of the total proposed price will be disqualified and will not be considered for award.

The successful Contractor shall furnish both a performance and payment bond, each in the amount equal to one hundred percent (100%) of the contract as security for the faithful performance of this contract.

d. Captions

Captions in all sections of this document are provided only as a convenience and shall not affect the interpretation of this instrument, its attachments, and addenda.

e. Contract Terms

The contract shall be for a period of one year beginning on or about July 1, 2015, and ending June 30, 2016, with up to four (4) one-year renewals with mutual agreement between the SFA and the FSMC. This contract cannot be effective prior to the date of final approval by Virginia Department of Education (VDOE) and signed by both parties.

f. Employees

The current food service employees will be employed by the SFA.

g. Errors or Omissions

The proposing vendor shall not be allowed to take advantage of any errors or omissions in the specifications. Where errors occur in the specification, the vendor shall promptly notify the contact person listed. Inconsistencies in the specifications are to be reported prior to proposals being submitted.

h. Final Contract

The complete contract includes all documents included by the SFA in the RFP and all documents submitted by the FSMC that have been mutually agreed upon by both parties; i.e., worksheets, appendixes and operating cost sheets.

i. Gifts from FSMC

The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

j. Incurred Cost

Any cost incurred by the FSMC prior to VDOE final approval and the signing of the contract by all parties, shall be the responsibility of the FSMC.

k. Late Proposals

The SFA will not consider any proposal received after the exact time specified for receipt. (Note that all proposals must be received in the Purchasing Office before 1:00 p.m. (local prevailing time) on August 21st, 2015. The official time will be determined by the clock on the wall in the Falls Church City Schools' Purchasing Office.

l. Meal Equivalents

The use of a calculation for meal equivalents or equivalency factor provides a method by which a la carte sales, catering and reimbursable meals other than lunch can be equated to one reimbursable lunch.

If applicable, all á la carte sales and cash sales from non-reimbursable student meals will be converted to meal equivalents in order to apply the fix fee per lunch meal. A la carte revenue shall include adult meals and a la carte sales to students and adults.

The formula established by the Virginia Department of Education for determining the meal equivalent shall be used. The FSMC and the SFA shall determine the a la carte meal equivalents by dividing the total a la carte revenue by the sum of the USDA fee lunch reimbursement, plus the USDA food entitlement value per lunch, plus the Virginia state per meal lunch reimbursement. The total cash receipts divided by this value will the number of meal equivalents. This total value will be established and written into the final contract based on the USDA reimbursement rates for the SY2015-2016.

m. Payment and Fees

This is a fixed fee contract. The FSMC shall not bill the SFA for any costs of operation other than the fixed fee-per-meal for meals/meal equivalents served. The FSMC must maintain documentation of all costs and must furnish this documentation upon request to the SFA, Virginia Department Education, the Virginia Department of Agriculture and Consumer services and/or the U.S Department of Agriculture.

The FSMC shall pay the SFA the full amount of any meal over-claims that are attributable to the FSMC's negligence, including those over claims based on review

or audit findings that occurred during the effective dates of original and renewal contracts.

n. Additional Information

- FSMC team shall consist of delivery personnel and possibility of food servers on a as needed basis.
- FSMC should not contact any school official, school board member, or school district employee at any time prior to the opening of the proposals. All questions should be emailed to Richard Kane at RKane@FCCPS.org.
- FSMC is required to have a minimum of (5) years operating experience with public schools in the United States of America.
- Entrée choice minimums: Elementary School 3-5
- 85% of all lunches must be from scratch or prepared from raw product. (ie. No precooked meats)
- Three copies of proposals are to be provided. Alternate proposals will not be accepted FSMC must have a web based ordering system to place orders
- All questions regarding the RFP process are to be submitted in writing to Richard Kane by e-mail at RKane@fCCPS.org by 3:00 p.m. on August 18th, 2015. Addenda addressing material questions and answers will be posted on the City's website www.fallschurchva.gov/bids .
- There will be no advanced or additional visits to Falls Church City Public Schools or its facilities prior to or after the Pre-Proposal Meeting.

II. Standard Terms and Conditions

1. Scope and Purpose

A. In accordance with 7 CFR 210.16(a) (4), The SFA and the FSMC shall operate in conformance with the Annual Agreement to Participate in the School Nutrition Programs between the Virginia Department of Education (VDOE) and the SFA in accordance with 7 CFR 210.16(2)(2).

B. The FSMC, such as an independent contractor, shall have the exclusive right to operate the School Nutrition Programs which may include all of the following programs:

- i. National School Lunch Program (NSLP)
- ii. School Breakfast Program (SBP)
- iii. A la Carte
- iv. Before and Afterschool Snack Programs

Proposals must include all of the SFA's programs.

C. The FSMC shall be an independent contractor and not an employee of the SFA. The employees of the FSMC are not employees of the SFA.

D. The main goal of the food service is for it to be operated and maintained for the benefit to the SFA's students, faculty, and staff during reconstruction of the school.

E. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, grants, loans, etc., shall accrue to the School Nutrition Programs Account of SFA.

F. The SFA and the FSMC agree that this contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a-percentage-of-cost" contract as required under 7 CFR § 210.16(c) and 7 CFR § 3016.36(f) and 3019.44(c).

G. The SFA shall be legally responsible for the conduct of the food service program, and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the VDOE and the United States Department of Agriculture (USDA) regarding each of the School Nutrition Programs covered by this contract.

H. In accordance with 7 CFR 210.16(a) (4), The SFA shall retain control of the food service account and overall financial responsibility for the food service.

I. The SFA, in accordance with 7 CFR 210.16(a)(4), shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a la carte prices (including vending, adult meals, contract meals, and catering, as applicable).

J. The SFA will provide additional food service, such as banquets, parties, refreshments for meetings, etc.

K. The SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast

periods, provided such is not prohibited by local wellness policies, state statute or regulation, or federal statute or program regulations.

L. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction. The FSMC shall comply with the local Wellness Policy including the nutrition guidelines as required.

The FSMC shall comply with the rules, regulations, policies, and instructions of VDOE and USDA, and any additions or amendments thereto, including but not limited to, Title 7 CFR parts 210, 215, 220, 245, 250, 3016, 3017, 3018, and 3019

M. The FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet, and those non-disabled students who are unable to consume regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis when supported by a Medical Statement with the required information. There will be no additional charge to the student for such substitutions.

N. Payment Terms/Method: The FSMC shall invoice the SFA at the end of each month for amounts due based on on-site records. The SFA shall make payments within 30 business days of the invoiced date. Detailed cost documentation must be submitted monthly to support what the SFA is charged for each cost, charge, or expense. Costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC and be allowed by the State Agency (SA). Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.

O. The SFA is responsible for all contractual agreements entered into in connection with the School Nutrition Programs.

2. Signature Authority

A. The SFA in accordance with 7 CFR 210.16(a)(5), shall retain signature authority for the annual agreement to participate in the SNP (School Nutrition Program), including but not limited to the Financial Report, the Verification Report, and the on-line submission of all information and claims.

B. The SFA shall retain signature authority for the Monthly Claim for Reimbursement and all other reporting through the Single Sign-on for WEB Systems (SSWS) School Nutrition Programs (SNP) applications.

3. Free and Reduced Price Meals Policy

A. The SFA is responsible for implementation of free and reduced price policy in accordance with 7 CFR Part 245 and is ultimately responsible for ensuring that all requirements are being met and the information on the application remains the property of the SFA.

B. The SFA shall implement an accurate point of service (POS) meal/milk count using the meal counting system submitted in their application to participate in the School Nutrition Programs and approved by VDOE, as required under Title 7 CFR § 210.8. Such meal/milk counting system must eliminate the potential for the over identification of free and reduced price eligible students under Title 7 CFR § 245.8. The SFA currently uses Café Enterprise as its POS system.

C. The SFA shall be responsible for the completion, distribution, and collection of the parent letter and household application for free and reduced price meals and/or free milk.

D. The SFA shall be responsible for obtaining the Direct Certification Lists from SSWS each year for use to determine eligibility for free meals without obtaining a household application for free and reduced price meals and/or free milk from parent/guardian.

E. The SFA shall be responsible for the determination of eligibility for free and reduced price meals and free milk and will not disclose confidential information to the FSMC, as required under Title 7 CFR § 210.16(a). This information is held within the point of sale database (Café Enterprise) to comply with the provisions of Item 3(B).

F. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk.

G. The SFA shall be responsible for verifying household applications for free and reduced price meals and follow-up activities as required by federal regulations.

4. USDA Donated Foods (if applicable)

A. The SFA shall retain title to all USDA donated foods and shall ensure that all USDA donated foods made available to the FSMC, including processed donated foods, accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein .

B. The FSMC is prohibited from entering into any processing contracts utilizing USDA donated foods on behalf of the SFA. All refunds, discounts and credits received from processors must be retained by the nonprofit school food service account.

C. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to, USDA donated foods.

D. The FSMC shall select, accept and use USDA donated foods in as large quantities as may be efficiently utilized in the SFA's nonprofit food service, subject to approval of the SFA. The SFA shall consult with the FSMC in the selection of commodities; however, the final determination as to the acceptance of commodities must be made by the SFA.

E. The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service. The FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service.

F. The FSMC must assure that the procurement of processed end products on behalf of the SFA, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR Part 250, and with the provisions of distributing or recipient agency processing agreements, and will ensure crediting of the SFA for the value of donated foods contained in such end products at the processing agreement value.

- G.** The FSMC shall have records available to substantiate that the full value of all USDA donated foods is used solely for the benefit of the SFA. The FSMC shall retain all USDA commodities records for a period of three (3) years for inspection and audit by representatives of the SFA, State Agencies, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit.
- H.** The value of USDA donated commodities used must be itemized in the regular monthly billing to the SFA to document savings resulting from commodity usage. The values are to be based on the values at the point the SFA receives the commodities from the distributing agency and based on the USDA Commodity Value Listing pertinent to the time period. This information is available from the Virginia Department of Agriculture and Consumer Services, Food Distribution Office.

5. Crediting For and Use of Donated Foods

- A.** In accordance with USDA regulations 7 CFR 250.51(a), the FSMC shall credit the SFA in current school year for the value of all donated foods received by the SFA for use in the school nutrition programs, whether the donated foods are used in that year or not. This includes the value of donated foods contained in end products that the FSMC may procure from a processor on behalf of the SFA. (including both entitlement and bonus foods).

The FSMC must credit the SFA for the value of donated foods contained in processed end products if the FSMC is required to:

- i. Procure processed end products on behalf of the SFA, or
- ii. Act as an intermediary in passing donated food value in processed end products on to the SFA.

6. Inventory, Storage and Record Retention of USDA Donated Foods

- A.** When this contract or subsequent renewals terminates, the FSMC must return all unused donated ground beef, donated ground pork, processed end products, and all other unused donated foods.
- B.** The FSMC will comply with the storage and inventory requirements for donated foods in accordance with 7CFR 250.14(b). This Inventory system must ensure that inventory management does not result in the recipient agency being charged for donated foods.
- C.** The SFA, VDOE, Virginia Department of Agriculture and Consumer Services (VDACS), USDA, or their duly authorized representatives, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods.
- D.** The FSMC will maintain records to document its compliance with requirements relating to donated foods, in accordance with 7 CFR § 250.45(b)
- E.** The SFA must maintain the following records relating to the use of donated foods:

1. The donated foods and processed end products received and provided to the FSMC for use in the SFA's food service.
2. Documentation that the FSMC has credited the SFA for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR § 250.51(a), the value of donated foods contained in processed end products.
3. The actual donated food values used in crediting.

F. The FSMC must maintain the following records relating to the use of donated foods:

- I.** The donated foods and processed end products received from, or on behalf of, the SFA, for use in the SFA's food service.
- 2.** The FSMC must show documentation that it has credited the SFA for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR § 250.51(a), the value of donated foods contained in processed end products.
- 3.** The FSMC must maintain documentation of its procurement of processed end products on behalf of the SFA, as applicable.

G. The SFA must ensure that the FSMC is in compliance with the requirements of this part through its monitoring of the food service operation, as required in 7 CFR Parts 210, 225, or 226, as applicable.

H. The SFA must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year.

7. Health Certifications

A. The SFA shall maintain all applicable health certifications on its facilities and shall ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any SFA facility.

B. The FSMC shall maintain state and/or local health certifications for any facility outside the SFA in which it proposes to prepare meals and shall maintain this health certification for the durations of the contract as required under Title 7 CFR § 210.16(c).

C. The FSMC shall adhere to the Food Safety Plan implemented by the SFA for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required under Public Law 108-265.

8. Meals

A. The FSMC shall serve fresh, nutritious, tasty and visually appealing meals on such days and at such times as requested by the SFA.

B. The SFA shall retain control of the quality, extent, and general nature of the food service.

- C.** The SFA shall offer free, reduced price and paid reimbursable meals to all eligible children participating in the School Nutrition Programs.
- D.** The FSMC shall provide meals in the School Nutrition Programs that meet all regulatory requirements for the National School Lunch Program in accordance with 7 CFR 210 and the School Breakfast Program in accordance with 7 CFR 220. Menus must meet nutrition goals when averaged over a school week and minimum requirements by food component and grade group. All menus and a-la carte items must adhere to the USDA regulations.
- E.** The FSMC must provide 85% of the lunch meal made from scratch and not processed foods.
- F.** The FSMC snacks, if included in the scope of work, must be of high nutritional value and limited processed sugars
- G.** The FSMC must provide nutrition analysis and calorie counts for meals and snacks selected
- H.** The FSMC must be able to provide gluten free and nut free products if requested.
- I.** The FSMC must follow all food safety procedures to ensure all meals are delivered at the appropriate temperatures to prevent food borne illness. Documentation of all Hazard Analysis Critical Control Point (HACCP) procedures must be provided. The FSMC must be able to provide consistent quality control, and care of all meals until they are delivered.
- J.** The FSMC must be able to comply with all USDA NSLP and SBP menu recordkeeping and planning necessary to receive reimbursements.
- K.** The FSMC must have previous experience working with multiple school sites.
- L.** The FSMC shall provide on the premises only those foods and beverages meeting current published USDA guidelines and authorized by the SFA and only at the times and places designated by the SFA.
- M.** No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of the contract.
- N.** The FSMC must provide to SFA a monthly menu covering the meals to be served for the following month no later than one (1) week prior to the end of each month for the following month.
- O.** The FSMC must maintain all necessary records on the nutritional components and quantities of the meals served and making said records available for inspection by SNA and VDOE upon request.
- P.** The FSMC must comply with the 21-day menu developed by the SFA for the school lunch and breakfast programs and included in the RFP. Any changes made by the FSMC after the first 21-day cycle may be made with the approval of the SFA. Menus should follow standard menu planning principles; strive for balance of nutrients, flavors, colors and texture; offer choices in as many components as

possible and include the food combinations most acceptable to students. The SFA shall approve menus no later than two weeks prior to service.

Q. SFA stipulates the following for required lunch meals: No frozen meals, no hydrogenated oils, no artificial trans fats, no deep fried foods, no overly processed foods, no high fructose corn syrup, no artificial preservatives, colors, flavors or sweeteners, no msg, foods with little or no added sugar, meats shall be free of nitrates and nitrites, no animal by products, no mechanically separated meats (aka pink slime), no BHA and BHT, and no L-Cystine.

9. Books and Records and Reports

A. The FSMC shall maintain on site such records (supported by invoices, receipts or other evidence) as the SFA will need to meet monthly reporting responsibilities and to support the SFA's claims for reimbursement, and shall submit monthly operating statements in a format approved by the SFA no later than the tenth (10th) calendar day succeeding the month in which services were rendered. Participation records shall be submitted no later than the fifth (5th) working day succeeding the month in which services were rendered.

B. The FSMC shall maintain records to support all allowable expenses appearing on the monthly operating statement. These records shall be kept in an orderly fashion according to expense categories.

C. The FSMC shall provide the SFA with a year-end statement.

D. The SFA shall conduct an internal audit of food, labor and other large expense items quarterly, as well as performing random audits on smaller expense categories.

E. The SFA and the FSMC must provide all documents as necessary for the independent auditor to conduct the SFA's single audit.

F. Books and records of the FSMC pertaining to the School Nutrition Program operations shall be made available, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including extensions) to which they pertain, for audit, examination, excerpts and transcriptions by the SFA and/or any state or federal representatives and auditors.

G. If audit findings regarding the FSMC's records have not been resolved within the three-year period, the records must be retained beyond the three-year period for as long as required for the resolution of issues raised by the audit. (Reference 7 CFR § 210.9[b][17], 7 CFR § 3016.36[i][10] and 7 CFR § 3019.49[d].)

H. The SFA is responsible for ensuring resolution of program review and audit findings.

10. Employees

A. For the purpose of this response, all foodservice workers will be SFA employees.

B. Current SFA employees, including site and division-level managers as well as any other staff, will be retained by the SFA; though positions, duties, and responsibilities may change.

C. The SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself/herself in a manner that is detrimental to the well-being of the students.

D. All SFA and/or FSMC personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, fire and safety devices in the kitchen and cafeteria areas.

E. Any employees offered by the FSMC to provide services under this Agreement must undergo the same screening as an employee of the FCCPS. This includes obtaining necessary medical screening [a Tuberculosis (TB) certificate], fingerprint check through the Virginia Criminal Records Exchange (or other state equivalent) to the Federal Bureau of Investigation, and a Search of Registry of Founded Complaints of Child Abuse and Neglect (for VA residents) and search of equivalent database/records for state of residence.

11. Monitoring

A. The SFA shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations per 7 CFR §210.16.

12. Use of Advisory Group/Menus

A. The SFA is responsible for the formation and establishment of an advisory board composed of students, employees (to include at least one health services employee), and parents to assist in menu planning and periodic meetings. This advisory board shall be chaired by a division-level administrator, which is designated by the division superintendent. The FSMC shall participate in these periodic meetings.

13. Use of Facilities, Inventory, Equipment & Storage

A. The SFA will make available, without any cost or charge to the FSMC, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.

B. The SFA reserves the right, at its sole discretion, to sell or dispense food or beverages, provided such use does not interfere with the operation of the School Nutrition Programs. These items would be in compliance with USDA regulations.

C. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules and regulations.

D. The SFA shall be responsible for any losses, including USDA donated foods, which may arise due to equipment malfunction or loss or electrical power not within the control of the FSMC.

E. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.

F. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.

G. The FSMC shall request in writing permission from the SFA before placing any equipment belonging to the FSMC on SFA premises. This request shall be submitted ten (10) working days prior to its desired placement on SFA premises.

H. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.

I. The SFA shall surrender to the FSMC upon termination of the contract, all equipment, and furnishings in good repair and condition belonging to FSMC.

14. Purchases

A. P.L. 110-246, Section 4302 of the Richard B. Russell National School Lunch Act (NSLA), allows SFAs to purchase unprocessed locally grown and locally raised agricultural products. NSLA allows SFAs to apply a geographic preference when procuring unprocessed locally grown and locally raised agricultural products. These provisions must also adhere to the Virginia Public Procurement Act.

B. The payment of late fees and interest with school food service account funds is prohibited.

15. Invoices

A. The FSMC must submit a monthly statement to the SFA.

16. Buy American

A. The FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S.

B. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA.

C. The SFA reserves the right to review vendor purchase records to ensure compliance with the Buy American provision.

17. Sanitation

A. The FSMC:

- i. Shall place garbage and trash in the containers in the designated areas as specified by the SFA if applicable.
- ii. Shall comply with all local and state sanitation requirements in the preparation of food.

18. Licenses, Fees and Taxes

A. The FSMC shall maintain and provide copies of all licenses and permits as required by federal, state, and/or local law to SFA.

19. Non-Discrimination

Both the SFA and the FSMC agree to prohibit discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and, where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.

20. Emergency Closing

A. The SFA shall notify the FSMC of any interruption in utility service of which it has knowledge.

B. The SFA shall notify the FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

21. Term and Termination

A. This contract shall become effective on for School year 2015-2016 (July 1, 2015, and terminates on June 30, 2016.

B. The SFA or the FSMC may terminate the contract for cause by giving 30 days written notice.

C. At any time, because of circumstances beyond the control of the FSMC, the FSMC or the SFA may terminate the contract by giving 30 days written notice to the other party.

D. All termination notices must be done in writing by certified mail directed to the Falls Church City Superintendent and Foodservice Director. The FSMC shall identify a main point of contact for correspondence including, but not limited to, terminations, negotiations, and any other conflicts.

E. Neither the FSMC nor the SFA shall be responsible for any losses resulting should the fulfillment of the terms of the contract be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of the FSMC or the SFA, respectively, and which by the exercise of due diligence they were unable to prevent.

22. Nonperformance by the FSMC

A. In the event of the FSMC's nonperformance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.

23. Certifications

A. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

B. The FSMC shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations, 41 CFR, Part 60.

C. The FSMC shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a and 15b; the Americans with Disabilities Act; the FNS Instruction 113-6, Civil Rights Compliance and Enforcement in School Nutrition Programs.

D. The FSMC shall comply with the Buy American provision for contracts that involve the purchase of food, Title 7 CFR, Part 210.21 (d).

E. The FSMC shall sign the Certification of Independent Price Determination, Appendix A, which was attached as an addendum to the FSMC’s proposal and which is incorporated herein by reference and made part of this contract.

F. The FSMC shall sign the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Appendix B, which was attached as an addendum to the FSMC’s proposal and which is incorporated and made a part of this contract. (Reference 7 CFR §3017.) This certification assures the SFA that the FSMC has not been debarred from entering into contracts with the Federal Government or any other entity receiving Federal funds, or suspended from entering contracts during a time when the vendor is being investigated for a legal action is being taken to debar the vendor from contracting activities.

G. The FSMC shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Air Act (33 U.S.C. 1368), Appendix C, which was attached as an addendum to the FSMC’s proposal and which is incorporated and made a part of this contract

H. The FSMC shall sign the Lobbying Certification, Appendix D, which was attached as an addendum to the FSMC’s proposal and which is incorporated and made a part of this contract. If applicable, the FSMC has also completed and submitted Standard Form-LLL, Disclosure Form to Report Lobbying, Attachment.

24. Miscellaneous

A. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without respect to its choice of law provisions. The parties further agree that any claim brought under this Contract shall be filed and maintained only in the Circuit Court of Falls Church City, Virginia.

B. The FSMC shall comply with the provisions of the bid specifications, which are hereby in all respects made a part of this contract.

C. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA.

D. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.

E. This RFP, contract and any riders, addenda or appendices thereto constitute the entire contract between the SFA and the FSMC.

F. Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

G. Payments on any claim shall not preclude the SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.

H. This contract must be reviewed and approved by the VDOE Office of School Nutrition Programs prior to execution.

I. The FSMC shall comply with all applicable local, state, and federal policies, ordinances, and regulations that apply to the SFA.

25. Insurance

A. The FSMC is required to be insured adequately to support the terms of the contract. The FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Virginia. A Certificate of Insurance of the FSMC's insurance coverage indicating these amounts must be submitted at the time of award.

B. The FSMC shall have in effect during all times under this agreement, comprehensive general liability insurance, including products and completed operations liability, contractual liability, and independent contractor's liability coverage and personal injury. Minimum coverage shall be \$1,000,000 per incident/per person.

General Liability- \$1,000,000
Workman's Compensation- Statutory
Vehicle Insurance- \$1,000,000

C. In addition, the FSMC shall provide fire and theft insurance at its own expense to cover any risk created by fire and/or theft to its property located on the premises of the SFA.

D. The contract of insurance shall provide for notice to the SFA of cancellation of insurance policies 30 days before such cancellation is to take effect.

A. All contract renewals shall be for a period of one year beginning July 1 and ending June 30, with mutual agreement between the SFA and the FSMC. Renewal contracts cannot be effective prior to the final approval date by VDOE and signed by both parties. Failure to have renewal contracts fully executed prior to July 1, will lapse this contract and require the SFA to re-bid the contract.

B. Renewal year contracts are contingent upon fulfillment of all contract provisions.

26. PRICE ESCALATION/DE-ESCALATION:

Offers are submitted with the understanding that no price increases will be authorized for 365 calendar days after the effective date of the contract. Upward price adjustments may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the SFA's purchasing office. This adjustment may be negotiate at the end of each one-year contract period and shall be based on a percentage equal to the percentage increase in the Consumer Price Index ("CPI") Consumer Price Index (CPI) Food Away From Home averaged for the immediately previous year provided it has been satisfactorily established by the FSMC that there has been at least an equivalent increase in the amount of its cost of operation during the period of the contract. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the SFA.

27. Trade Secrets and Proprietary Information

- A. After an award is made and announced, proposals will be open to inspection in accordance with the Code of Virginia Section 2.2-4342 (C.). Therefore, protection of any trade secrets for specific proprietary information must be requested upon submission of the data or materials. Offerors must identify the specific information to be protected and state the reasons why protection is necessary. The identification of the entire proposal as proprietary or confidential is not acceptable and may result in the rejection of the proposal.
- B. Any discovery, invention, software, or programs paid for by the SFA shall be the property of the SFA to which the State Agency and USDA shall have unrestricted rights.
- C. By submitting their proposal, all Offerors certify that their proposals are made without collusion or fraud and they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for the procurement transaction any payment loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or grater value was exchanged.

28. Hold Harmless Protection

- A. The undersigned Vendor will indemnify and hold the School Board of Falls Church City Public Schools, Virginia, and its officers, agents, and employees harmless from and against all claims, damages, and losses arising out of or resulting from the Vendor's providing or failure to provide any construction, product, goods, or services required, including but not limited to any such claim, damage, loss, or expense, that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting there from, or to economic loss; provided, however, that the Vendor's indemnification obligation under this agreement shall be limited to claims, damages, losses, and expenses to the extent caused by any act or omission of the Vendor, or any subcontractor (a "Subcontractor") performing work required by the Vendor's contract with the School Board, or anyone directly or indirectly employed by any of them or anyone for whose acts the Vendor or his Subcontractor may be liable. Recovery of any loss resulting from the failure to provide product, goods, and services under this contract which is due solely to the failure of the software shall be limited to the amount paid by the School Board for software licenses and fee.

The Vendor's indemnification obligation hereunder with respect to any and all claims against the School Board or any of its officers, agents or employees, by any employee or statutory employee of the Vendor, or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts the Vendor or Subcontractor may be liable, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Vendor or any Subcontractor under Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts unless otherwise provided by law.

B. III. Sample Minimum Food Specifications

Meat/Seafood

All meats, meat products, poultry, poultry products, and fish must be government inspected.

- Beef, lamb, and veal shall be USDA Grade Choice or better and must be either raw or frozen raw.
- Pre-cooked meat is not acceptable with the exception being Deli meats.
- Pork shall be U.S. No. 1 or U.S. No. 2.
- Poultry shall be U.S. Government Grade A, frozen raw or refrigerated raw.
- Pre-cooked poultry is not acceptable with the exception being deli meats.
- Seafood to be top grade, frozen fish must be a nationally distributed brand, packed under continuous inspection of USDA.

Dairy Products

All dairy products must be Government Inspected.

- Fresh eggs shall be USDA Grade A or equivalent , 100% candled.
- Frozen eggs must be USDA inspected.
- Milk shall be pasteurized Grade A.

Fruits and Vegetables

- Fresh fruits and vegetables selected according to written specifications for freshness, quality, and color- U.S. Grade A Fancy.
- Canned fruits and vegetables selected to requirements U.S. Grade A Choice or fancy (fruit to be packed in light syrup , water or natural juices).
- Frozen fruits and vegetables shall be U.S. Grade A Choice or better.

Baked Products

- Bread, rolls, cookies, pies, cakes and pudding either prepared or baked on premises or purchased on a quality level commensurate with meeting USDA breakfast and lunch requirements as applicable.
- Baked products that are considered faux healthy food are not allowed, pop tarts, donuts, etc. SFA reserves the right to reject any item not fitting into overall mission of the foodservice program.

Staple Groceries

- Staple groceries to be a quality level commensurate with previously listed standards.

APPENDIX A. Independent Price Determination Certificate

Both the School Food Authority (SFA) and Food Service Management Company (offeror) shall execute this Certificate of Independent Price Determination.

Name of Food Service Management Company

Name of School Food Authority

(A) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

- (1) The prices in this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

(B) Each person signing this offer on behalf of the Food Service Management Company certifies that:

- (1) He or she is the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or
- (2) He or she is not the person in other offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (A)(1) through (A)(3) above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this Food Service Management Company, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

Signature of FSMC's Authorized Representative

Title

Date

In accepting this offer, the SFA certifies that no representative of the SFA has taken any action that may have jeopardized the independence of the offer referred to above.

Signature of SFA's Authorized Representative

Title

Date

NOTE: ACCEPTING A FIRM'S OFFER DOES NOT CONSTITUTE AWARD OF THE CONTRACT.

Appendix B
U. S. DEPARTMENT OF AGRICULTURE

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name
Name

PR/Award Number or Project

Names(s) and Title(s) of Authorized Representative(s) of the FSMC

Signature(s)

Date

Appendix B (cont)
Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Appendix C: Clean Air and Water Certificate

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act 33 U.S.C. 1319(d) and is listed by EPA or the contract is not otherwise exempt. Both the School Food Authority (SFA) and Food Service Management Company (offeror) shall execute this Certificate.

 Name of Food Service Management Company

 Name of School Food Authority
THE FOOD SERVICE MANAGEMENT COMPANY AGREES AS FOLLOWS:

A. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

B. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

C. To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.

D. To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:

A. The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).

B. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

C. The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

D. The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

E. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

F. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased or supervised by the Food Service Management Company.

 Signature of FSMC's Authorized Representative

 Title

 Date

 Signature of SFA's Authorized Representative

 Title

 Date

Appendix D**CERTIFICATION REGARDING LOBBYING****Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.**

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Name/Address of Organization (FSMC)

Name/Title of Submitting Official

Signature

Date

Appendix D**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: _____ a. bid/offer/application b. initial award c. post-award	3. Report Type: _____ a. initial filing b. material change For Material Change Only: Year _____ Quarter _____ Date of Last Report _____		
4. Name and Address of Reporting Entity: Prime Sub-awardee Tier, if known: Congressional District , if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District , if known:			
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number , if applicable: _____			
8. Federal Action Number , if known:	9. Award Amount , if known: \$ _____			
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> 10. a. Name and Address of Lobbying Entity: different from (last name, first name, MI) </td> <td style="width: 50%; border: none; vertical-align: top;"> 10. b. Individuals Performing Services (including address if No. 10,a.) </td> </tr> </table> (Attach Continuation Sheet(s) SF-LLL-A If Necessary) (if individual, last name, first name, middle)			10. a. Name and Address of Lobbying Entity: different from (last name, first name, MI)	10. b. Individuals Performing Services (including address if No. 10,a.)
10. a. Name and Address of Lobbying Entity: different from (last name, first name, MI)	10. b. Individuals Performing Services (including address if No. 10,a.)			
11. Amount of Payment (check all that apply): \$ _____ Actual \$ _____ Planned	13. Type of payment (check all that apply): ___ a. retainer ___ b. one-time fee ___ c. commission ___ d. contingent fee ___ e. deferred ___ f. other; specify:			
12. Form of Payment (check all that apply): ___ a. cash ___ b. in-kind; specify: Nature _____ Actual _____				
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contracted for Payment indicated in Item 11: (Attach Continuation Sheet(s) SF-LLL-A, if necessary)				
15. Are Continuation Sheet(s) SF-LLL-A Attached: Yes _____ (Number _____) No _____				
<table style="width: 100%; border: none;"> <tr> <td style="width: 45%; border: none; vertical-align: top;"> 16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. </td> <td style="width: 55%; border: none; vertical-align: top;"> Signature: _____ Print Name: _____ Title: _____ Telephone: _____ </td> </tr> </table>			16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone: _____
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	Date: _____
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Appendix D (cont)

DISCLOSURE OF LOBBYING ACTIVITIES

Reporting Entity: _____ **Page** _____ **of** _____

CONTINUATION SHEET SF-LLL-A

Appendix D (cont)**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use of SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee; e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) Number, Invitation for Bid (IFB) Number; grant announcement number; the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
11. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
16. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached. List number of sheets, if yes.
17. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

fic reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing uctions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of rmation. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for ing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348-00046), Washington, DC 20503.

Appendix E: 21-Day Menus

A separate file titled “Appendix E - 21-day Menus for RFP #15-0427 Food Service Management Company” can be accessed on the Falls Church City website www.fallschurchva.gov/bids. This file is part of this RFP.

Dr. Toni Jones
Superintendent

Hunter Kimble
Assistant Superintendent

Lisa High
Assistant Superintendent of
Curriculum Innovation and
Personnel

Richard Kane
Director of Foodservice

Falls Church City Public Schools

800 West Broad Street Ste 203
Falls Church, Virginia 22046
Phone: (703) 248-5600

REQUEST FOR PROPOSALS
FALLS CHURCH CITY, VIRGINIA
RFP # 2015160
FOOD SERVICE MANAGEMENT

ATTACHMENT A - COMPANY CERTIFICATION

The undersigned, on behalf of _____
(insert company name)

hereby certifies to the Falls Church City School Board and Falls Church City Public Schools that any
employee of the company who will have direct contact with students on school property during regular school
hours or during school-sponsored activities while providing services called for in the contract:

- A. have not been convicted of a felony or any offense involving the sexual molestation or
physical or sexual abuse or rape of a child.

This certification is provided in accordance with the provisions of § 22.1 - 296.1 of the Code of Virginia.

Certification is also made in accordance with § 2.2 - 4311.1 that:

A. the contractor does not, and shall not during the performance of the contract for goods and services,
knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of
1986.

Signature: _____ Date: _____

Printed Name and Title of Person Making Certification

Address: _____ Phone: _____

Fax: _____

Service(s) Provided: _____

ATTACHMENT B: REFERENCE FORM

This form must be completed and returned as part of your proposal packet. Firms shall provide the following references for four (4) similar projects within Virginia.

CONTRACTOR'S NAME

RFP # 2015160

1. FIRM NAME	
CONTACT PERSON	TITLE
STREET ADDRESS, CITY, STATE, ZIP	
TELEPHONE	FAX
SPECIFIC INFORMATION	
2. FIRM NAME	
CONTACT PERSON	TITLE
STREET ADDRESS, CITY, STATE, ZIP	
TELEPHONE	FAX
SPECIFIC INFORMATION	
3. FIRM NAME	
CONTACT PERSON	TITLE
STREET ADDRESS, CITY, STATE, ZIP	
TELEPHONE	FAX
SPECIFIC INFORMATION	
4. FIRM NAME	
CONTACT PERSON	TITLE
STREET ADDRESS, CITY, STATE, ZIP	
TELEPHONE	FAX
SPECIFIC INFORMATION	

ATTACHMENT C:

**General Terms and Conditions City of Falls Church VA and
The City of Falls Church Public Schools**

As used herein the terms “City of Falls Church”, “City”, etc. shall also mean the Falls Church City Public Schools, FCCPS and SFA unless otherwise specified.

The headings and order of the sections are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.

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1. Order Of Precedence And Use Of Terms

- A. In the event that there is a conflict between any specific terms, conditions and/or provisions of this RFP, the specific provisions of the RFP shall take precedence over the “General Terms and Conditions” which shall take precedence over the “General Definitions, Provisions and Instructions to Offerors” sections herein.
- B. In the event there is a conflict between any specific terms, conditions and/or provisions of contract documents resulting from this solicitation, the contract shall take precedence over the Request for Proposals which shall take precedence over the Offeror’s response to the Request for Proposals unless otherwise stipulated in the contract.

2. Competition Intended

- A. It is the FCCPS’ intent that this Request for Proposals (RFP) permits competition. It shall be the Offeror’s responsibility to advise the School’s Purchasing Office, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Schools Purchasing Office not later than ten (10) business days prior to the date set for acceptance of proposals. Confirmation of email receipt shall be the responsibility of the notifying Offeror.
- B. Nothing herein is intended to exclude any Offeror or in any way restrain or restrict competition. All qualified Offerors are encouraged to submit proposals.

3. Rights Of The FCCPS

- A. Among the indisputable rights of the FCCPS specified herein, the FCCPS, at its sole discretion may:
 - 1. cancel, withdraw or re-advertise this RFP; accept or reject all or any part of proposals; and/or waive minor technicalities/informalities.
 - 2. award a contract to multiple Offerors by individual items, in the aggregate, or in combination thereof whenever any such actions are in the best interest of the FCCPS.
 - 3. issue RFPs for similar work and other projects as the need may occur; issue Purchase Orders and/or expand or otherwise modify existing Purchase Orders for work similar to that being proposal hereunder, in consideration of the FCCPS’ knowledge and/or evaluation of each Contractor's qualifications, expertise, capabilities, performance record, current ability to perform, location and/or distance to the project, and any and all other factors as may be pertinent to the particular project and for the convenience of the FCCPS.
 - 4. add, delete or change services, locations, requirements, frequency of service, or other factors related to the goods and/or work under contract dependent upon requirements that may develop during the contract period and cannot guarantee the amount of work or predict future funding for any resultant contract.
 - 5. use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.
- B. This is a Request for Proposals and is in no way to be misconstrued as a commitment to purchase on the part of the FCCPS.

4. Eligibility

The following minimum requirements for proposal submission:

- A. The Offeror must submit their Virginia State Corporation Commission (“SCC”) registration number or justification for exemption.
- B. The Offeror must be licensed in accordance with any specific requirements of this solicitation and the Code of Virginia

- C. Any person or firm, or agent of any person or currently suspended or debarred from participation in FCCPS or City of Falls Church procurement, conducting business or submitting proposals on contracts by any other local government or agency of the Commonwealth of Virginia, or the Federal Government is not eligible for contract award under this solicitation.
- D. Any current debarment (Federal, state or local jurisdiction) must be disclosed on the Company Information Form.

5. Proposal Submission Covenants

The Offeror's signature on the RFP Cover Page covenants and certifies acknowledgement and compliance with following:

1. Fully Informed

The Offeror acknowledges that they have read this solicitation, understand it, has satisfied itself from its own investigation of the conditions to be met and/or products to be provided, fully understands Offeror's obligation, agrees to be bound by this solicitation's terms and conditions (except as otherwise explicitly provided in writing), and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. In addition the Offeror has or will provide properly trained employees, staff, subcontractors (if approved by the FCCPS), or other personnel; and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations; that in any manner may affect the cost, delivery, progress, or performance of products and/or work proposed and to be provided under this RFP.

2. Collusion

In the preparation and submission of this RFP, the Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

3. Employees Not to Benefit

- a. To the best of the Offeror's knowledge, no FCCPS or City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family (including spouse, parents or children), has received, been promised, directly or indirectly, or will receive any financial benefit, including but not limited to fees, commission, finder's fee, political contribution or any similar form of remuneration, or other financial benefit of more than nominal or minimal value on account of the act of awarding and/or executing the contract.

If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award

of contract and becomes known after inception of a contract, the Offeror shall address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. The relevant solicitation number should be referenced in the disclosure.

4. Insurance

If awarded the contract, the Contractor shall have insurance coverages as specified in the section entitled "Insurance" at the time the work commences and shall submit proof of such insurance to the City as stipulated in that section.

5. Ethics In Public Contracting

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Public Procurement Act as set forth in the Code of Virginia, as amended, pertaining to Offerors, Offerors, contractors, and subcontractors are applicable to this solicitation. By submitting a proposal, the Offeror certifies that their proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

6. Conflict of Interest

The provisions referenced in the paragraph above entitled "Ethics In Public Contracting" above, supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

7. Employment Discrimination By Contractor Prohibited

During the performance of any resultant contract, the Offeror will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that:

In every contract over \$10,000.00 the provisions in "a" and "b" below apply:

a. During the performance of the contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

8. Drug Free Workplace

Every Contract over \$10,000 the following shall apply:

During the performance of any resultant contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

6. Projected Requirements/Estimated Quantities:

- A. Unless otherwise specified, any quantities detailed in this solicitation are estimates only, and are given for the information of Offerors and for the purpose of proposal evaluation. They do not indicate the actual quantity of services that will be ordered or may be required to meet the specifications or requirements in the Scope of Work since the actual volume will depend upon requirements that develop during the contract period.
- B. The FCCPS reserves to right to add, delete or change service types, site locations and/or service frequency dependent upon requirements that may develop during the contract period.

7. Tax Exemption

The FCCPS is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. The Tax Exempt Certificate will be furnished upon request. The price offered must be net, exclusive of taxes.

8. Anti-Discrimination

By submitting their proposals, Offerors certify to the FCCPS that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

9. Cooperative Procurement

- A. As authorized in Section 2.2-4304 of the Code of Virginia, this procurement is being conducted on behalf of other public bodies. Any resultant contract may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor at the same prices and/or discounts and terms.
- B. Each jurisdiction and/or political subdivision has the option of executing a separate agreement with the Contractor after making their own legal determination as to whether the use of the contract is consistent with their laws, regulations, and other policies. Such other contracts may contain general terms and conditions unique to those jurisdictions and/or political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body or political subdivision.
- C. The FCCPS assumes no responsibility for any notification of the availability of any resultant contract for use by other public bodies. It is the responsibility of the Contractor to notify the jurisdictions and/or political subdivisions of the availability of any contract resulting from this solicitation.

10. Contract Documents

- A. This solicitation, including all addenda, attachments, exhibits and/or appendices hereto, shall become a part of any contract that may be awarded inclusive of any terms, conditions and/or provisions that may be changed, added to, deleted, or modified as may be agreed to between FCCPS and the Offeror during negotiations.
- B. Other documents which shall become a part of any resultant contract include but are not limited to:
 - 1. Offeror's Proposal and any modifications accepted by FCCPS,
 - 2. Proposal clarifications; responses to questions/issues,
 - 3. Documents submitted in conjunction with oral discussions/presentations, and
 - 4. Memoranda of Negotiations.
- C. EXCEPTIONS – This solicitation contains terms and conditions FCCPS/City favors and intends to use in any resultant contract. FCCPS/City reserves the right to negotiate any and all exceptions in its best interest.
- D. There is no binding agreement, no contractual relationship, no understanding nor mutual assent until a contract is signed, executed and exchanged by and between authorized representatives of the Offeror and FCCPS.
- E. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written modification.

11. Subcontractors

- A. In the event that the Offeror desires to subcontract some part of the work specified in the solicitation or contract, the Offeror shall furnish FCCPS the names, qualifications, and experience of the proposed subcontractors and the percentage of the work under any resultant contract to be performed by each.
- B. FCCPS reserves the right to reject the successful Offeror's (Contractor's) selection of or proposed percentage use of subcontractors.
- C. No portion of the work shall be subcontracted without prior written consent of the FCCPS.
- D. The Contractor shall remain fully liable and responsible for: supervising and directing the work to be done by his/her subcontractor(s) including those persons either directly or indirectly employed by Contractor and shall assure compliance with all the requirements of

the contract; payment to; performance, acts and omissions of their subcontractors, partners and of all persons employed by them and to assure that the subcontractor's insurance is in compliance with the requirements of this solicitation and for assuring that all subcontractors, partners, and/or others furnished by or acting at Contractor's direction or on Contractor's behalf, comply and remain in compliance with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and/or inspections.

- E. The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, the Commonwealth of Virginia or other state where the contract is to be performed.
- F. The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of the contract insofar as they are applicable to the work of subcontractors.
- G. Nothing contained in the contract shall create any contractual relationship between any subcontractor and the FCCPS.

12. Authority to Transact Business in Virginia

A Contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the City pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The City may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

13. Choice Of Law and Courts

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court of the City of Falls Church or in the Circuit Court of the County of Arlington, Virginia.

14. Compliance With Laws

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

The Contractor shall comply with the then current Code of Virginia including Section 2.2-4300, the Virginia Procurement Act; well as the City Code, Ordinances, Laws and Policies which are all incorporated herein by reference.

15. Procedures

The extent and character of the services to be performed by the Contractor(s) or goods delivered shall be subject to the general control and approval of the City's Project/Contract Manager.

16. Purchase Orders

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Except as [provided herein, Contractors providing goods or services without a signed City purchase order, do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

In case of an emergency as defined by the Project Manager or other authorized School representative, the Contractor shall cooperate to the extent reasonably requested with the understanding that a purchase order will follow.

Orders for less than \$1,000.00 do not require a purchase order.

17. Work Site Damages

Any damage to property, whether owned by the City or others, resulting from work performed under the contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

18. Ownership of Material/Products

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the solicitation shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act. All work under the Contract, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the City.

19. Use Of Information:

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

20. Workmanship, Inspection and Acceptance

Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from work that the City deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or goods delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements.

If goods or services do not conform to requirements, in addition to all other rights and remedies, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in or after testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in the section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

If the City has paid Contractor for all or part of the Services that are ultimately rejected or not accepted by the City, or if the City later determines that Contractor's performance of Services was performed in a manner that breached the terms of this Agreement, Contractor shall (in addition to any other remedy available to City) return to City all amounts paid for such Services.

21. BPOL License Requirement

Contractor shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301; Phone: (703) 248-5019; Fax: (703) 248-5212.

22. Payment Terms

Payment will be made once each month based upon satisfactory and actual services rendered and/or goods received and invoices submitted or as otherwise specified in the contract. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on Contractor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified in §2.2-4352 of the VPPA (1% per month).

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

23. Invoicing

All invoices to the City shall reference the applicable Purchase Order number and be submitted to the name and address on the Purchase Order unless otherwise directed by the City.

The prices and payments shall be full compensation for the goods, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the goods and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

Invoices for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

The City will not honor, process or pay invoices submitted by subcontractors.

24. Changes

The City may, at any time, by written order, require changes in the services to be performed or the goods to be provided by the Contractor under contract.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of goods under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Contractor shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representative of the parties shall then agree to and sign such modification to the purchase order or contract. Contractor's receipt and performance of a Purchase Order detailing such changes shall be deemed acceptance.

The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Contractor. No goods or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the goods/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

The City reserves the right to add similar goods/services or delete goods/services specified in the resultant contract as requirements change during the period of the contract by contract amendment. The City and the Contractor will mutually agree to prices for goods/services to be added to the contract and/or reduction in overall costs for items/services deleted.

25. Safety

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to the contract.

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work

site area under the contract. The City has sole right to dismiss contractors and/or sub-contractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

26. Communications

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the contractor's employees. Failure to have an English-speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

27. Warranties & Guarantees

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

All warranties shall survive inspection, acceptance and payment.

The Contractor agrees to: furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

28. Default

In case of the Contractor's failure to deliver goods, complete any part of the services agreed upon within the time specified, or in accordance with agreed schedules, or to meet specifications, material term, condition or provision in accordance with the contract terms and conditions, the City, after due oral or written notice, may consider the Contractor to be in default. In event of Contractor's default and reasonable opportunity to cure, if applicable and as determined by the City, the City may procure such services and/or goods from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any and all other remedies which the City may have.

29. Contract Disputes Resolution

Arbitration shall not be applicable but the parties shall negotiate in good faith to resolve any dispute arising under the contract. The Contractor's dispute shall detail all pertinent facts of the dispute and the Contractor's desired outcome.

Contractual disputes, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the dispute is based. Any notice or dispute shall be delivered to the City's Purchasing Agent, 300 Park Avenue, 3rd Floor East Wing, Falls Church, VA 22046 and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested. The Purchasing Agent shall render a decision on the claim and shall notify the Contractor within thirty (30) days of receipt of the dispute. The Contractor may appeal the decision of the Purchasing Agent to the City Manager by providing written notice to the Purchasing Agent, within fifteen (15) days of the date of the decision. The City Manager shall render a decision on the dispute within sixty (60) days of the date of receipt of the appeal notice and such decision shall be final unless the Contractor appeals the decision in accordance with the Virginia Public Procurement Act. Final invoice(s) for all services or goods provided by the

Contractor shall be delivered to the City no later than thirty (30) days following the conclusion of the work or delivery of the goods, unless other terms are prescribed by contract.

A Contractor may not institute legal action until all statutory requirements have been met or prior to receipt of City's decision on the claim.

Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any notices to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip from that person.

30. Termination

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Contractor, the Contractor is obligated and agrees to refund the City any and all monies paid (including advance payments) to it by the City for goods not delivered and/or services not satisfactorily rendered by said Contractor as of the date on which Contractor shall receive Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Contractor. The City may require Contractor to transfer title and deliver to the City any or all items produced or procured by Contractor under the contract for performance of the work terminated.

a. Termination for Convenience

The City may cancel and terminate the contract in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor at least ten (10) business days prior to the effective date. After receipt of a notice of termination, the Contractor must stop all work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issues prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Contractor for: (1) cause, default, or negligence ("default") on the part of the Contractor; or (2) if the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Contractor shall be liable for all damages to the City resulting from Contractor's default or bankruptcy.

In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years**

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by the contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

31. Delays / Service Failure

Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected goods/services when so requested, immediately or as directed by the City, shall be cause or default and constitute authority for the City to purchase in the open market goods/services of comparable grade/quality to replace the services, goods rejected, and/or not delivered and charge the full increase in cost and handling to the defaulting Contractor. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designated City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

32. Indemnification

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

Contractor expressly understands and agrees that any performance bond or insurance protection required by the contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Contractor shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.

The Contractor shall protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

33. Insurance

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
 - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - 2) Maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the City, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
 - 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
 - 4) Maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
 - 5) Maintain Environmental Impairment Liability Insurance including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
 - 6) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
 - 7) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 - a. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under the contract, or

- b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of the contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 8) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- 9) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.
- 10) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractor's insurance agent or representative. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required
- c. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- e. Contractual and other liability insurance provided under the contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
- g. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that his coverage "is primary to all other coverage the City may possess."
- h. If an "ACCORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.
- i. Insurance coverage required by this solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

34. Correspondence

All communications between the parties relating to material contractual issues shall be through the City's Purchasing Office and must be in writing to be deemed binding.

35. Quality

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All goods and services shall meet the then current applicable state and federal rules and guidelines.

All goods provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Goods shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

36. Brand Name Or Equivalent Items

Unless otherwise specified herein, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the product desired, and any product which the City, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, will be accepted.

37. Bonding/Contract Security

The City reserves the right to require a bid/proposal, performance, and/or payment bond for contracts for goods or services if specified in this solicitation in accordance with sections § 2.2-4336 "Bid Bonds", § 2.2-4337 "Performance and Payment Bonds" and other related sections of the VA Public Procurement Act. In such case, the successful Offeror shall bear the cost and be required to furnish such bid, performance, and/or bond in the specified amount with the bid and/or before award of contract, as applicable. The parties shall mutually agree upon the form of the bond document/agreement. If no bond can be furnished by the successful Offeror, the City reserves the right to award the contract to the next most highly qualified and responsible Offeror in the best interest of the City.

38. News Release/Publicity By Contractors

The City does not endorse the goods or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

39. Emergency Purchases

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service, satisfactory to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor.

40. Americans With Disabilities Act Requirements

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract resulting from this solicitation acknowledges your commitment and compliance with ADA requirements.

41. Immigration Reform And Control Act

By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 as may be amended.

42. Virginia Freedom Of Information Act

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

43. Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under the contract, without the prior written consent of the City.

44. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

45. Payments To Subcontractors

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under the Contract, the Contractor shall either:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

46. Time Of The Essence

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.

47. Antitrust

By entering into a contract, the contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

48. Relationship of the Parties

The Contractor will be legally considered and acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

49. Severability

The sections, paragraphs, sentences, clauses and phrases of the contract are severable, and if any phrase, clause, sentence, paragraph or section of the contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of the contract.

50. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the City of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

51. Non-Exclusive Market Rights

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Contractor an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the purchase of any goods or services from Contractor by the City. Contractor understands and agrees that the City is free to and may contract with other manufacturers and Contractors for the procurement of comparable goods or services.

52. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

53. Conflict Of Interest

In the event that a conflict of interest arises with Contractor acting as the City's authorized Contractor on a specific job, the City reserves the right to seek professional services elsewhere on the specific job over which the conflict arose.

54. Shipping And Billing

Unless instructed otherwise by the City, Contractor shall, for Purchase Orders placed hereunder: (1) deliver entire quantity of items ordered to the destination designated in the Purchase Order in accordance with any specific shipping instructions; (2) enclose a packing memorandum with each shipment and when more than one package is shipped, identify the one containing the memorandum; (5) legibly mark or label on the outside of the shipping container the City's Purchase Order number, commodity description and quantity on all packages and shipping papers; (6) render itemized invoices showing Purchase Order number to the billing address on the Purchase Order and (7) utilize standard commercial packaging, packing and shipping containers.

Products shall be shipped by Contractor, F.O.B., Destination, from Contractor's nearest facility capable of meeting the City's requirements using the most cost effective common carrier with transportation charges prepaid by Contractor and added as a separate item to the invoice to be paid by the City. In no event will City be liable for premium shipping modes unless previously authorized.

55. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

56. General Definitions, Provisions And Instructions To Offerors

The general rules and provisions which follow apply to all purchases and become a part of each formal solicitation and resulting contract award issued by the City of Falls Church Schools, unless otherwise specified.

1. DEFINITIONS: The terms defined in this section shall have the meanings set forth below whenever they appear in this Solicitation regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
 - a. BEST VALUE: As predetermined in the Request for Proposal, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.
 - b. OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the City.
 - c. CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
 - d. CITY: City of Falls Church, VA or its Public Schools.
 - e. DAY: Unless otherwise specified "day" or "days" shall mean calendar days.
 - f. GOODS/PRODUCTS: All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.
 - g. INFORMALITY: A minor defect or variation of a proposal or proposal from the exact requirements of the invitation to proposal or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
 - h. PROPOSAL: The offer of a supplier to provide goods and/or services in accordance with general specifications or requirements in a Request for Proposal solicitation (RFP). A proposal is subject to scope and price negotiation.

- i. **PURCHASING AGENT:** The Purchasing Agent employed by the City of Falls Church, Virginia or the School's Purchasing Officer or their designee.
 - j. **REQUEST FOR PROPOSAL (RFP):** A request which is made to prospective suppliers (Offeror) for a Proposal. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.
 - k. **RESPONSIBLE OFFEROR:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.
 - l. **SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
 - m. **SOLICITATION:** Depending upon the context an RFP or the process of notifying prospective Offerors that the City wishes to receive proposal on a set of requirements to provide goods or services.
 - n. **STATE:** Commonwealth of Virginia.
2. **LEGAL ACTION:** No Offeror, potential Offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.
 3. **FEDERAL SPECIFICATIONS:** Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).
 4. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend the contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
 5. **SHIPPING:** Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.
 6. **RESPONSIBILITY FOR SUPPLIES TENDERED:** Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
 7. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the contract. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to

the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.

8. **CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
9. **BANKRUPTCY:** If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.
10. **SERVICE CONTRACT GUARANTY:** Contractor agrees:
 - a. To furnish services described in the solicitation at the times and places and in the manner and subject to conditions therein set forth, provided, however, that the City may reduce the said service at any time.
 - b. To enter upon the performance of services with all due diligence and dispatch; assiduously press to its complete performance and exercise therein the highest degree of skill and competence.
 - c. All work performed and services rendered shall strictly conform to all laws, statutes, regulations, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agencies.
 - d. Said services may be inspected by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
 - e. The presence of a City/State Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.
11. **SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWAM):**
 - a. The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City. Contact the Virginia Department of Minority Business Enterprise for information regarding certification and certified businesses: <http://www.dmbe.virginia.gov/>
 - b. Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.